IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

v. CRIMINAL NO. 3:16cr50DPJ-FKB

CARL REDDIX

GOVERNMENT'S MEMORANDUM
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

The Acting United States Attorney, by and through his undersigned assistant, submits this Memorandum in Opposition to Defendant's Motion to Dismiss.

BACKGROUND

The Grand Jury returned a seven count indictment against Carl Reddix (Reddix) on July 13, 2016, finding probable cause to charge him with one count of conspiring to commit honest services wire fraud under 18 U.S.C. §1349 and six counts of bribery of a state agent whose agency receives federal funds under 18 U.S.C. § 666(a)(2). Reddix filed a Motion to Dismiss claiming that the indictment does not give him fair notice of the "official act" as required by *U.S. v. McDonnell*, 136 S. Ct. 2355 (2016). For the following reasons, Reddix's motion should be denied.

Law of Sufficiency of Indictments

Rule 7(c)(1) of the Federal Rules of Criminal Procedure states the following, in pertinent part:

> The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government.

Rule 12(b)(3)(B) of the Federal Rules of Criminal Procedure states that a party may file a motion challenging a defect in the indictment or information, including a lack of specificity and a failure to state an offense, before trial.

The Supreme Court has stated there are "two constitutional requirements for an indictment: 'first, [that it] contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, [that it] enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense.' " *United States v. Resendiz-- Ponce*, 549 U.S. 102, 108 (2007) (quoting *Hamling v. United States*, 418 U.S. 87, 117 (1974)); *see also United States v. Threadgill*, 172 F.3d 357, 373 (5th Cir. 1999) (to be sufficient, an indictment needs only to allege each essential element of the offense charged so as to enable the accused to prepare his defense and to allow the accused to invoke the double jeopardy clause in any subsequent proceeding).

Although an indictment " 'must allege that the defendant committed each of the essential elements of the crime charged . . ., [i]t is not necessary for an indictment to go further and to allege in detail the factual proof that will be relied upon to support the charges.' " *United States v. Caldwell*, 302 F.3d 399, 412 (5th Cir. 2002) (quoting *United States v. Crippen*, 579 F.2d 340, 342 (5th Cir. 1978)). "The test is not whether the indictment might have been drawn with greater certainty and exactitude, but rather whether it set forth the elements of the offense charged and sufficiently apprized the defendant of the charges to prepare for." *United States v. Markham*, 537 F.2d 187, 193 (5th Cir. 1976); *see also United States v. Webb*, 747 F.2d 278, 284 (5th Cir. 1984) (the test for the validity of an indictment is not whether the indictment could have been framed in a more satisfactory manner, but whether it conforms to minimal constitutional standards). The validity of an indictment is determined by reading it as a whole and by practical, not technical, considerations. *United States v. Gonzalez*, 436 F.3d 560, 569 (5th Cir. 2006).

When analyzing the sufficiency of an indictment, a court should "take the allegations of the indictment as true and [] determine whether an offense has been stated." *United States v. Kay*, 359 F.3d 738, 742 (5th Cir. 2004) (quoting *United States v. Hogue*, 132 F.3d 1087, 1089 (5th Cir. 1998)).

The Current Indictment: Count One

The indictment under scrutiny consists of seven counts. The first count charges a conspiracy to commit honest services wire fraud under 18 U.S.C. §§1343, 1346 and 1349. The elements of wire fraud under § 1343 are: (1) a scheme to defraud, (2) the use of, or causing the use of, wire communications in furtherance of the scheme, and (3) the specific intent to defraud. *U. S. v. Grace*, 568 Fed. Appx. 344, 348 (5th Cir. 2014). In order to convict for the federal crime of honest services fraud under § 1346, the government "must prove that the conduct of a state official breached a duty respecting the provision of services owed to that official's employer under state law." *Id*. at 348-349. *See also* Fifth Circuit's Criminal Pattern Jury Instruction 2.57.

The conspiracy to commit the crime of wire fraud by Reddix requires a meeting of the minds such that (1) two or more persons, directly or indirectly, reached an agreement to commit the crime of mail and/or wire fraud as charged in the indictment; (2) Reddix knew of the unlawful purpose of the agreement; and (3) Reddix joined in the agreement willfully, that is, with the intent to further its unlawful purpose. *See U. S. v. Madrid*, 610 Fed. Appx. 359, 379-380 (5th Cir. 2015) *citing United States v. Simpson*, 741 F. 3d 539, 547 (5th Cir. 2014).

Count One fairly puts Reddix on notice of the charge against him. It sets forth the code sections he violated and it describes what he did to violate them. Specifically, he is charged with being one of the owners of Health Assurance, LLC, (H.A.), a company that entered contracts with the Mississippi Department of Corrections (MDOC) to render inmate health care services at various MDOC facilities. The count sets forth the years that H.A. entered into the contracts and the office held by Reddix's co-conspirator, Christopher B. Epps (Epps). Count One also sets forth the scheme to defraud the citizens of the State of Mississippi of Epps's honest services through bribes and kickbacks by Reddix that benefited Reddix and his company, H.A. The count even details the dates and amounts of bribes/kickbacks paid by Reddix to Epps. A common sense reading would include Epps's actions to provide a service or official act to influence or ensure that H.A. received the contracts noted in the indictment.

Reddix, however, contends that Count One is bereft of the requisite specificity to allow him to prepare a defense or later claim double jeopardy. Reddix hangs his hat on *McDonnell v. U. S.*, 136 S. Ct. 2355 (2016). In *McDonnell* the parties stipulated that the "official act" that gives rise to honest services fraud should be defined as in the federal bribery statute 18 U. S. C. § 201(a). There, the Court confronted the issue of a comprehensive jury instruction that may have criminalized innocuous routine behavior of a public official. *McDonnell* at 2375. *McDonnell* dealt with a disputed jury instruction, not the sufficiency of an indictment, as is the issue here. *McDonnell* provided a framework for *instructing* the jury as to what is an "official action." First, the district court "should have instructed the jury that it must identify a 'question, matter, cause, suit, proceeding or controversy' involving the formal exercise of governmental power." *McDonnell* at 2374. Second, the district court "should have instructed the jury that the pertinent 'question, matter, cause, suit, proceeding or controversy' must be something specific and focused that is 'pending' or 'may by law be brought before any public official,' such as the question whether to initiate the research studies." *Id*. Third, the district court should have instructed the jury that it had to find the defendant "made a decision or took an action—or agreed to do so—*on* the identified "question, matter, cause, suit, proceeding or controversy," *Id*.

It is clear that *McDonnell* is a case on jury instructions not the specificity of indictments. *U. S. v. Williams*, 2017 WL 1030804 (N.D. GA 2017). The grand jury's indictment as to Count One sufficiently puts Reddix on notice of the charge against him. A plain reading of the indictment reveals that Reddix obtained state MDOC contracts based upon the influence of Epps who was "bought and paid for," not once but at the rate of at least $6,000 per month from 2012 through October of 2014. This purchased influence is actionable. *See McDonnell* at 2370-71("if a public official uses his official position to provide advice to another official, knowing or intending that such advice will form the basis for an "official act" by another official," that is sufficient.)

Of course, should Reddix believe he is entitled to more facts necessary to mount a defense than what the Government has provided, he may move for a bill of particulars.

The Current Indictment: Counts Two through Seven

Counts Two through Seven charge violations of 18 U.S.C. §666(a)(2) which prohibits bribery/kickbacks concerning programs receiving federal funds. The elements are: (1) an agent, Epps, of a local (state) government, (2) which received Federal program benefits in excess of $10,000 for the one-year period alleged, (3) aided and abetted by Reddix, (4) corruptly accepted and agreed to accept, (5) funds in excess of $5,000, (6) so that Epps would be influenced and rewarded, (7) in connection with the business transactions of the MDOC in favor of a business owned by Reddix. *See Nowlin v. United States*, 81 F. Supp. 3d 514 (N.D.MS 2015). Fifth Circuit Pattern Jury Instructions 2.33C.

Counts Two through Seven identify substantive bribes/kickbacks from Reddix to Epps. Each count sets forth the requisite elements to apprise Reddix of the charge against him. Each count notes that Reddix corruptly paid Epps with the intent to influence him in connection with the business of the MDOC, that is the awarding and the retention of contracts to Health Assurance, LLC. Each alleges the minimal jurisdictional amount of federal funds received by the state agency and the corrupt funds given in excess of $5,000. This is sufficient.

As stated for Count One, *McDonnell* does not address indictments but opines on jury instructions. Additionally, *McDonnell's* requirement of a specific official act is not applicable even for a jury instruction in the context of a § 666(a)(2) violation. See *U. S. v. Porter*, 2017 WL 1095040 (E.D.KY 2017) and *U. S. v. Whitfield*, 590 F. 3d. 325, 349 (5th Cir. 2009) (The law only requires that the Government prove the "specific intent to give or receive something of value *in exchange* for an official act" to be performed sometime in the future.").

Reddix's Evidentiary Allegations

Reddix next attempts to have the indictment dismissed by attacking the proof of the Government. In Paragraphs 13 and 14 of his Motion he states:

> The contracts identified by the government in the indictment, except the 2008 contract for Walnut Grove Correctional Facility, were awarded in response to a request for proposals. Upon information and belief, Epps was not a member of the selection committee that reviewed the proposals and awarded the contracts outlined in the indictment to Reddix/Health Assurances. The government, however, does not allege that Epps used his official position to exert pressure

> on another official to perform an "official act" or to advise another official, knowing or intending that such advice will form the basis for an `official act' by another official.
>
> 14. Because all of the contracts, except the Walnut Grove contract, were awarded by a committee of which Epps was not a member and the indictment does not outline any specific "official act" Epps took or promised to take for Reddix/Health Assurances, the indictment is insufficient to put Reddix on notice of what the government alleges he did, if any, that ran afoul of 18 U.S.C. § 1349 and 18 U.S.C. § 666(a)(2).

The indictment as to all Counts is valid on its face. It informs Reddix of the charges against him and it enables him to "adequately plead an acquittal or conviction in bar of future prosecutions for the same offense." *U.S. v. Mann*, 517 F.2d 259, 268 (5th Cir. 1975). In *Mann*, the court stated that a "defendant may not properly challenge an indictment, sufficient on its face, on the ground the allegations are not supported by adequate evidence, for an indictment returned by a legally constituted and unbiased grand jury, if valid on its face, is enough to call for trial of the charge on the merits." *Id.* at 267(*citing Costello v. U.S.*, 350 U.S. 359, 363 (1956)). This evidentiary attack is premature. The Government has put Reddix on notice of the charges against him. After the Government rests its case, Reddix may move for acquittal, but not before.

CONCLUSION

Because the Indictment sufficiently alleges the statutory violations committed by Reddix, his motion to dismiss should be denied.

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CERTIFICATE OF SERVICE

I, Darren J. LaMarca, Assistant United States Attorney, hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

DATED, this the 14th day of April, 2017.

s/ Darren J. LaMarca
Darren J. LaMarca